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Court Tells FBI To Review Data On Rosenbergs

By Ruth Marcus
Washington Post Staff Writer

A federal appeals court panel here ruled yesterday that the FBI had for the most part adequately complied with a Freedom of Information Act request filed by the children of Julius and Ethel Rosenberg for documents relating to their parents' espionage case.

But the three-judge panel of the U.S. Court of Appeals said records of the case examined by the FBI in 1975 through 1978 should be reviewed again for possible release because of indications that "many of the documents . . . were improperly withheld."

Freddi Lipstein, a Justice Department lawyer who handled the case, said the reconsideration would involve about 70,000 pages of documents out of more than 500,000 involved in the case.

Ruling in what it said "may well be the most demanding FOIA request ever filed," the panel upheld lower court findings that the FBI had adequately searched its files to retrieve information and properly refused to release some of the documents.

The Rosenbergs' sons, Michael and Robert Meeropol, filed their FOIA request in 1975, seeking from the FBI, Justice Department, CIA, and other government agencies "all of the records relating directly or indirectly to investigation and prosecution of our parents." The FBI at one time assigned 65 full-time and 21 part-time employees to process the request; the agencies eventually released about 200,000 pages of documents.

In a 38-page opinion, Judge Robert H. Bork said "a search is not unreasonable simply because it fails to produce all relevant material," and upheld the lower court's procedure of testing the validity of the FBI's reasons for withholding some of the documents by examining a 1 percent sample of randomly chosen pages.

Bork was joined in the opinion by Judge Antonin Scalia and Senior Judge George E. MacKinnon.

"We do not consider it a loss," Lipstein said. "We realized there were some flaws" in the FBI's early review of the documents.

"It's a partial victory," said the Meeropols' lawyer, Marshall Perlin.

The Rosenbergs were executed in 1953 after being convicted of delivering atomic secrets to the Soviet Union.